

Senate Chamber, Atlanta, Georgia
Tuesday, February 1, 2005
Tenth Legislative Day

The Senate met pursuant to adjournment at 10:00 a.m. today and was called to order by the President.

Senator Thomas of the 54th reported that the Journal of the previous legislative day had been read and found to be correct.

By unanimous consent, the reading of the Journal was dispensed with.

The Journal was confirmed.

The following message was received from the House through Mr. Rivers, the Clerk thereof:

Mr. President:

The House has passed by the requisite constitutional majority the following Bill of the House:

HB 98. By Representatives Golick of the 34th, Roberts of the 154th, Smith of the 70th and Jones of the 46th:

A BILL to be entitled an Act to amend Chapter 22 of Title 36 of the O.C.G.A., relating to community greenspace preservation, so as to provide a short title; to provide for state and local government activities with respect to land conservation; to state legislative intent; to define terms; to create the Georgia Land Conservation Council and provide for its membership, powers, duties, and operations; to create the Georgia Land Conservation Trust Fund and to create the Georgia Land Conservation Revolving Loan Fund and provide for appropriations and other additions to said funds, as well as grants and other disbursements from said funds; to provide for eligibility for and award and disbursement of grants to counties, cities, and the Department of Natural Resources; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

The following Senate legislation was introduced, read the first time and referred to committee:

- SB 100. By Senators Hamrick of the 30th, Thompson of the 33rd, Johnson of the 1st and Starr of the 44th:

A BILL to be entitled an Act to amend Chapter 8 of Title 16 of the O.C.G.A., relating to offenses involving theft, so as to provide for the "Georgia Residential Mortgage Fraud Act"; to provide a short title; to provide for definitions; to define the criminal offense of residential mortgage fraud; to provide for venue; to provide penalties; to authorize district attorneys and the Attorney General to investigate and prosecute cases of residential mortgage fraud; to provide for the forfeiture of real and personal property; to amend Chapter 14 of Title 16 of the O.C.G.A., the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act," so as to include residential mortgage fraud within the definition of racketeering activity; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

Referred to the Banking and Financial Institutions Committee.

- SB 101. By Senators Wiles of the 37th, Harp of the 29th, Reed of the 35th and Weber of the 40th:

A BILL to be entitled an Act to amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to provide for requests that a hearing, trial, or other proceeding be held before an elected judge of the superior or state court, as the case may be; to provide for a definition; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

Referred to the Special Judiciary Committee.

- SB 102. By Senators Rogers of the 21st, Hudgens of the 47th, Stephens of the 27th, Mullis of the 53rd, Smith of the 52nd and others:

A BILL to be entitled an Act to amend Chapter 30 of Title 33 of the Official Code of Georgia Annotated, relating to group accident and sickness insurance, so as to clarify a definition; to require that insurers offering coverage in the individual market must participate in the assigned risk pool and may take adverse underwriting action on the basis of permitted health status factors and other evidence of insurability; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

Referred to the Insurance and Labor Committee.

SR 67. By Senators Johnson of the 1st, Mullis of the 53rd, Tolleson of the 20th, Goggans of the 7th, Stephens of the 27th and others:

A RESOLUTION proposing an amendment to the Constitution so as to provide that the tradition of fishing and hunting and the taking of fish and wildlife shall be preserved for the people and shall be managed by law and regulation for the public good; to provide for submission of this amendment for ratification or rejection; and for other purposes.

Referred to the Natural Resources and the Environment Committee.

The following House legislation was read the first time and referred to committee:

HB 98. By Representatives Golick of the 34th, Roberts of the 154th, Smith of the 70th and Jones of the 46th:

A BILL to be entitled an Act to amend Chapter 22 of Title 36 of the O.C.G.A., relating to community greenspace preservation, so as to provide a short title; to provide for state and local government activities with respect to land conservation; to state legislative intent; to define terms; to create the Georgia Land Conservation Council and provide for its membership, powers, duties, and operations; to create the Georgia Land Conservation Trust Fund and to create the Georgia Land Conservation Revolving Loan Fund and provide for appropriations and other additions to said funds, as well as grants and other disbursements from said funds; to provide for eligibility for and award and disbursement of grants to counties, cities, and the Department of Natural Resources; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

Referred to the Natural Resources and the Environment Committee.

The following committee report was read by the Secretary:

Mr. President:

The Rules Committee has had under consideration the following legislation and has instructed me to report the same back to the Senate with the following recommendation:

SR 49 Do Pass

Respectfully submitted,
Senator Balfour of the 9th District, Chairman

Senator Seabaugh of the 28th asked unanimous consent that Senator Mullis of the 53rd be excused. The consent was granted, and Senator Mullis was excused.

Senator Johnson of the 1st asked unanimous consent that Senator Starr of the 44th be excused. The consent was granted, and Senator Starr was excused.

The roll was called and the following Senators answered to their names:

Adelman	Hill,Jack	Shafer,D
Brown	Hill,Judson	Smith
Bulloch	Hooks	Staton
Butler	Hudgens	Stephens
Cagle	Johnson	Stoner
Carter	Jones	Tate
Chance	Kemp	Thomas,D
Chapman	Me V Bremen	Thomas,R
Douglas	Miles	Thompson,C
Fort	Moody	Tolleson
Goggans	Pearson	Unterman
Golden	Powell	Walker
Grant	Reed	Weber
Hamrick	Rogers	Whitehead
Harbison	Schaefer,N	Wiles
Harp	Seabaugh	Williams
Heath	Seay	Zamarripa
Henson		

Not answering were Senators:

Balfour	Mullis (Excused)	Starr (Excused)
Thompson, S		

The members pledged allegiance to the flag.

Senator Williams of the 19th introduced the chaplain of the day, Reverend Bucky Kennedy of Vidalia, Georgia, who offered scripture reading and prayer.

Senator Thomas of the 54th introduced the doctor of the day, Dr. David Malebranche.

The following communication was received by the Secretary:

Senator Preston Smith

Committees:
Appropriations

District 52
301-A Legislative Office Building
Atlanta, GA 30334

Ethics
Health and Human Services
Judiciary
Reapportionment and Redistricting
Retirement

The State Senate
Atlanta, Georgia 30334

Tuesday, February 01, 2005
[Via hand delivery]

The Honorable Mark Taylor
Lieutenant Governor
240 State Capitol
Atlanta, Georgia 30334

Governor Taylor:

Please accept this letter as notice of my intent to move for engrossment of Senate Bill 3 at the appropriate time. Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your assistance with this motion.

Sincerely,

/s/ Preston W. Smith
State Senator, 52nd District

Senator Smith of the 52nd gave notice that at the proper time he would ask that SB 3 be engrossed.

The following resolutions were read and adopted:

SR 60. By Senator Goggans of the 7th:

A RESOLUTION recognizing and commending Ware County Magnet School on its designation as a 2005 Georgia School of Excellence in Student Achievement; and for other purposes.

SR 61. By Senator Goggans of the 7th:

A RESOLUTION recognizing and commending Patterson Elementary School on its designation as a 2005 Georgia School of Excellence in Student Achievement; and for other purposes.

- SR 62. By Senators Stoner of the 6th, Thompson of the 5th, Jones of the 10th, Hill of the 32nd, Mullis of the 53rd and others:

A RESOLUTION commending Keep Georgia Beautiful; and for other purposes.

- SR 63. By Senators Hooks of the 14th, Meyer von Bremen of the 12th and Harp of the 29th:

A RESOLUTION remembering and honoring the life of the Honorable John V. Harper; and for other purposes.

- SR 64. By Senator Hooks of the 14th:

A RESOLUTION commending Coach Melvin T. Kinslow; and for other purposes.

- SR 65. By Senators Mullis of the 53rd, Rogers of the 21st, Zamarripa of the 36th, Stephens of the 27th, Brown of the 26th and others:

A RESOLUTION commending the tourism industry in Georgia and establishing February 2, 2005, as a time to recognize that "Together, Tourism Works for Georgia"; and for other purposes.

- SR 66. By Senators Hill of the 4th, Stephens of the 27th, Thomas of the 54th, Tolleson of the 20th and Meyer von Bremen of the 12th:

A RESOLUTION recognizing February 3, 2005, as Community Health Centers Day; and for other purposes.

SENATE RULES CALENDAR
TUESDAY, FEBRUARY 1, 2005
TENTH LEGISLATIVE DAY

- SB 3 Torts; evidentiary matters, civil practice; revisions of provisions (PF)
(Substitute)(JUDY-52nd)

Respectfully submitted,

/s/ Balfour of the 9th, Chairman
Senate Rules Committee

The following legislation was read the third time and put upon its passage:

SB 3. By Senators Smith of the 52nd, Johnson of the 1st, Seabaugh of the 28th, Stephens of the 27th, Hamrick of the 30th and others:

A BILL to be entitled an Act to amend Titles 9, 24, and 51 of the O.C.G.A., relating respectively to civil practice; evidence; and torts, so as to provide for substantive and comprehensive revision of provisions regarding civil practice, evidentiary matters, and liability in tort actions in general and actions related to health care in particular; to provide for legislative findings; to change provisions relating to venue in actions with joint defendants; to change provisions relating to affidavits accompanying charges of professional malpractice; to provide for defendants' access to plaintiffs' health information in medical malpractice cases; to provide for offers for judgment and the effect thereof; to provide that certain statements of apology or fault by health care providers shall not be admitted as evidence in civil actions; to repeal conflicting laws; and for other purposes.

Smith of the 52nd moved that SB 3 be engrossed.

On the motion a roll call was taken, and the vote was as follows:

N Adelman	N Hill,Jack	Y Smith
Y Balfour	Y Hill,Judson	E Starr
N Brown	N Hooks	Y Staton
Y Bulloch	Y Hudgens	Y Stephens
N Butler	Y Johnson	N Stoner
Y Cagle	N Jones	N Tate
Y Carter	N Kemp	Y Thomas,D
Y Chance	N Me V Bremen	N Thomas,R
Y Chapman	N Miles	N Thompson,C
Y Douglas	Y Moody	N Thompson,S
N Fort	E Mullis	Y Tolleson
Y Goggans	Y Pearson	Y Unterman
N Golden	N Powell	N Walker
Y Grant	N Reed	N Weber
Y Hamrick	Y Rogers	Y Whitehead
N Harbison	Y Schaefer,N	Y Wiles
Y Harp	Y Seabaugh	Y Williams
Y Heath	N Seay	N Zamarripa
N Henson	N Shafer,D	

On the motion, the yeas were 29, nays 25, the motion prevailed; and SB 3 was engrossed.

Senator Thomas of the 2nd moved the Senate reconsider its action in engrossing SB 3.

On the motion, a roll call was taken, and the vote was as follows:

Y Adelman	N Hill,Jack	N Smith
N Balfour	N Hill,Judson	E Starr
Y Brown	Y Hooks	N Staton
N Bulloch	N Hudgens	N Stephens
Y Butler	N Johnson	Y Stoner
N Cagle	Y Jones	Y Tate
N Carter	N Kemp	N Thomas,D
N Chance	Y Me V Bremen	Y Thomas,R
N Chapman	Y Miles	Y Thompson,C
N Douglas	N Moody	Y Thompson,S
Y Fort	E Mullis	N Tolleson
N Goggans	N Pearson	N Unterman
Y Golden	Y Powell	Y Walker
N Grant	Y Reed	N Weber
N Hamrick	Y Rogers	N Whitehead
Y Harbison	N Schaefer,N	N Wiles
N Harp	N Seabaugh	N Williams
N Heath	Y Seay	Y Zamarripa
Y Henson	N Shafer,D	

On the motion to reconsider, the yeas were 22, nays 32, the motion lost; and the motion to engross SB 3 was not reconsidered.

The Senate Judiciary Committee offered the following substitute to SB 3:

A BILL TO BE ENTITLED AN ACT

To amend Titles 9, 24, 33, 43, and 51 of the Official Code of Georgia Annotated, relating respectively to civil practice; evidence; insurance; professions and businesses; and torts, so as to provide for substantive and comprehensive revision of provisions regarding civil practice, evidentiary matters, and liability in tort actions in general and actions related to health care in particular; to provide for legislative findings; to change provisions relating to venue in actions with joint defendants; to change provisions relating to affidavits accompanying charges of professional malpractice; to provide for defendants' access to plaintiffs' health information in medical malpractice cases; to provide for offers for judgment and the effect thereof; to provide new procedures for damages for frivolous claims and defenses; to provide that certain statements of apology or similar statements by health care providers shall not be admitted as evidence in civil actions; to change

provisions relating to opinions of experts; to create provisions regarding expert opinions in certain malpractice civil actions; to change provisions relating to reporting of medical malpractice judgments and settlements; to provide for investigations and remedial actions with respect to physicians' fitness to practice under certain circumstances; to limit noneconomic damages in certain actions relating to emergency health care; to change provisions relating to agency liability of hospitals; to change provisions relating to apportionment of award according to degree of fault; to create provisions relating to apportioning damages in certain malpractice actions; to limit noneconomic damages in certain actions relating to health care; to provide for payment over time of certain future damages in certain actions; to provide for related matters; to provide for severability; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

The General Assembly finds that there presently exists a crisis affecting the provision and quality of health care services in this state. Hospitals and other health care providers in this state are having increasing difficulty in locating liability insurance and, when such hospitals and providers are able to locate such insurance, the insurance is extremely costly. The result of this crisis is the potential for a diminution of the availability of access to health care services and a resulting adverse impact on the health and well-being of the citizens of this state. The General Assembly further finds that certain civil justice and health care regulatory reforms as provided in this Act will promote predictability and improvement in the provision of quality health care services and the resolution of health care liability claims and will thereby assist in promoting the provision of health care liability insurance by insurance providers. The General Assembly further finds that certain needed reforms affect not only health care liability claims but also other civil actions and accordingly provides such general reforms in this Act.

SECTION 2.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by striking Code Section 9-10-31, relating to actions against certain codefendants residing in different counties, and inserting in lieu thereof the following:

"9-10-31.

(a) The General Assembly finds that Paragraph IV of Section II of Article VI of the Georgia Constitution permits a trial and entry of judgment against a resident of Georgia in a county other than the county of the defendant's residence only if the Georgia resident defendant is a joint obligor, joint tort-feasor, joint promisor, copartner, or joint trespasser and therefore this Code section shall apply to all pending actions filed on or after July 1, 1999.

(b) Joint or joint and several tort-feasors, obligors, or promisors, or joint contractors or copartners, residing in different counties, may be subject to an action as such in the

same action in any county in which one or more of the defendants reside. If, however, the court determines prior to the commencement of trial that: who are joint or joint and several tort-feasors, obligors, or promisors, or joint contractors or copartners reside.

(1) ~~The plaintiff has brought the action in bad faith against all defendants residing in the county in which the action is brought; or~~

(2) ~~As a matter of law, no defendant residing in the county in which the action is brought is a proper party, the action shall be transferred to the county and court which the plaintiff elects in which venue is proper. The burden of proof on the issue of venue shall be on the party claiming improper venue by a preponderance of evidence.~~

~~(b)(c)~~ If all defendants who reside in the county in which an action is pending are discharged from liability before the commencement of trial or upon the return of a verdict by the jury or the court hearing the case without a jury, a nonresident defendant may require that the case be transferred to a county and court in which venue would otherwise be proper. If venue would be proper in more than one county, the plaintiff may elect from among the counties in which venue is proper trial court where the action has been pending shall determine the county and the court in to which the action shall proceed be transferred.

~~(e) If all defendants who reside in the county in which the action is pending are discharged from liability after the commencement of trial, the case may be transferred to a county and court in which venue would otherwise lie only if all parties consent to such transfer.~~

~~(d) For purposes of this Code section, trial shall be deemed to have commenced upon the jury being sworn or, in the instance of a trial without a jury, upon the first witness being sworn.~~

~~(e)(d)~~ Nothing in this Code section shall be deemed to alter or amend the pleading requirements of Chapter 11 of this title relating to the filing of complaints or answers.

~~(f) This Code section shall apply to actions filed on or after July 1, 1999."~~

SECTION 3.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by striking Code Section 9-11-9.1, relating to affidavits in professional malpractice cases, and inserting in its place a new Code section to read as follows:

"9-11-9.1.

(a) In any action for damages alleging professional malpractice against a professional licensed by the State of Georgia and listed in subsection ~~(f)(d)~~ of this Code section or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of Georgia and listed in subsection ~~(f)(d)~~ of this Code section, the plaintiff shall be required to file with the complaint an affidavit of an expert competent to testify, which affidavit shall set forth specifically at least one negligent act or omission claimed to exist and the factual basis for each such claim.

~~(b) The contemporaneous filing requirement of subsection (a) of this Code section shall not apply to any case in which the period of limitation will expire or there is a~~

~~good faith basis to believe it will expire on any claim stated in the complaint within ten days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of an expert could not be prepared. In such cases, the plaintiff shall have 45 days after the filing of the complaint to supplement the pleadings with the affidavit. The trial court may, on motion, after hearing and for good cause extend such time as it shall determine justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim.~~

~~(e) This Code section shall not be construed to extend any applicable period of limitation, except that if the affidavit is filed within the period specified in this Code section, the filing of the affidavit after the expiration of the statute of limitations shall be considered timely and shall provide no basis for a statute of limitations defense.~~

~~(d)(b)~~ If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading on or before the close of discovery, that said affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment pursuant to Code Section 9-11-15 within 30 days of service of the motion alleging that the affidavit is defective. The trial court may, in the exercise of its discretion, extend the time for filing said amendment or response to the motion, or both, as it shall determine justice requires.

~~(e)(c)~~ If a plaintiff fails to file an affidavit as required by this Code section and the defendant raises the failure to file such an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, such complaint shall not be subject to the renewal provisions of Code Section 9-2-61 after the expiration of the applicable period of limitation, unless a court determines that the plaintiff had the requisite affidavit within the time required by this Code section and the failure to file the affidavit was the result of a mistake.

~~(f)(d)~~ The professions to which this Code section applies are:

- (1) Architects;
- (2) Attorneys at law;
- (3) Certified public accountants;
- (4) Chiropractors;
- (5) Clinical social workers;
- (6) Dentists;
- (7) Dietitians;
- (8) Land surveyors;
- (9) Medical doctors;
- (10) Marriage and family therapists;
- (11) Nurses;
- (12) Occupational therapists;

- (13) Optometrists;
- (14) Osteopathic physicians;
- (15) Pharmacists;
- (16) Physical therapists;
- (17) Physicians' assistants;
- (18) Professional counselors;
- (19) Professional engineers;
- (20) Podiatrists;
- (21) Psychologists;
- (22) Radiological technicians;
- (23) Respiratory therapists; or
- (24) Veterinarians."

SECTION 4.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by inserting a new Code Section 9-11-9.2 to read as follows:

"9-11-9.2.

(a) In any action for damages alleging medical malpractice against a professional licensed by the State of Georgia and listed in subsection (d) of Code Section 9-11-9.1, against a professional corporation or other legal entity that provides health care services through a professional licensed by the State of Georgia and listed in subsection (d) of Code Section 9-11-9.1, or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of Georgia and listed in subsection (d) of Code Section 9-11-9.1, contemporaneously with the filing of the complaint, the plaintiff shall be required to file a medical authorization form. Failure to provide this authorization shall subject the complaint to dismissal.

(b) The authorization shall provide that the attorney representing the defendant is authorized to obtain and disclose protected health information contained in medical records to facilitate the investigation, evaluation, and defense of the claims and allegations set forth in the complaint which pertain to the plaintiff or, where applicable, the plaintiff's decedent whose treatment is at issue in the complaint. This authorization includes the defendant's attorney's right to discuss the care and treatment of the plaintiff or, where applicable, the plaintiff's decedent with all of the plaintiff's or decedent's treating physicians.

(c) The authorization shall provide for the release of all protected health information except information that is considered privileged and shall authorize the release of such information by any physician or health care facility by which health care records of the plaintiff or the plaintiff's decedent would be maintained."

SECTION 5.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by inserting in place of Code Section 9-11-68, which is reserved, a new Code Section 9-11-68 to read as follows:

"9-11-68.

(a) At any time more than 30 days after the service of a summons and complaint on a party but not less than 30 days (or 20 days if it is a counteroffer) before trial, either party may serve upon the other party, but shall not file with the court, a written offer, denominated as an offer under this Code section, to settle a claim for the money, property, or relief specified in the offer and to enter into an agreement dismissing the claim or to allow judgment to be entered accordingly. Any offer under this Code section must:

- (1) Be in writing and state that it is being made pursuant to this Code section;
- (2) Identify the party or parties making the proposal and the party or parties to whom the proposal is being made;
- (3) Identify generally the claim or claims the proposal is attempting to resolve;
- (4) State with particularity any relevant conditions;
- (5) State the total amount of the proposal and state with particularity all nonmonetary terms of the proposal;
- (6) State with particularity the amount proposed to settle a claim for punitive damages, if any;
- (7) State whether the proposal includes attorney's fees or other expenses and whether attorney's fees or other expenses are part of the legal claim; and
- (8) Include a certificate of service in the form required by Code Section 9-11-5.

(b) When the complaint sets forth a claim for money, if the offeree rejects or does not accept the offer and the judgment finally obtained by the offeree was not at least 25 percent more favorable than the last offer, the offeree shall pay the offeror's reasonable attorney's fees and costs incurred after the rejection of the last offer. When the complaint sets forth a claim for property or other nonmonetary relief, if the offeree rejects or does not accept the offer and the judgment finally obtained by the offeree is not more favorable than the last offer, the offeree shall pay the offeror's reasonable attorney's fees and costs incurred after rejection of the last offer.

(c) Any offer made under this Code section shall remain open for 30 days unless sooner withdrawn by a writing served on the offeree prior to acceptance by the offeree, but an offeror shall not be entitled to attorney's fees and costs under subsection (b) of this Code section to the extent an offer is not open for at least 30 days (unless it is rejected during that 30 day period). A counteroffer shall be deemed a rejection but may serve as an offer under this Code section if it is specifically denominated as an offer under this Code section. Acceptance or rejection of the offer by the offeree must be in writing and served upon the offeror. An offer that is neither withdrawn nor accepted within 30 days shall be deemed rejected. The fact that an offer is made but not accepted does not preclude a subsequent offer. Evidence of an offer is not admissible except in proceedings to enforce a settlement or to determine reasonable attorney's fees and costs under this Code section.

(d) Upon motion made within 30 days of the entry of the judgment or after voluntary or involuntary dismissal, the court shall determine the following:

- (1) If the offer of judgment was 25 percent more favorable than the monetary award

or the offer of nonmonetary relief or property was more favorable than the final relief, the court shall award reasonable attorney's fees and costs and the court shall set off such reasonable attorney's fees and costs against any award; and

(2) If a party is entitled to costs and fees pursuant to the provisions of this Code section, the court may determine that an offer was not made in good faith in an order setting forth the basis for such a determination. In such case, the court may disallow an award of attorney's fees and costs.

(e) Upon motion by the prevailing party at the time that the verdict or judgment is rendered, the moving party may request that the finder of fact determine whether the opposing party presented a frivolous claim or defense. In such event, the court shall hold a separate bifurcated hearing at which the finder of fact shall make a determination of whether such frivolous claims or defenses were asserted and to award damages, if any, against the party presenting such frivolous claims or defenses. Under this subsection:

(1) Frivolous claims shall include, but are not limited to, the following:

(A) A claim, defense, or other position that lacks substantial justification or that is not made in good faith or that is made with malice or a wrongful purpose, as those terms are defined in Code Section 51-7-80;

(B) A claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position; and

(C) A claim, defense, or other position that was interposed for delay or harassment;

(2) Damages awarded may include reasonable and necessary attorney's fees and expenses of litigation; and

(3) A party may elect to pursue either the procedure specified in this subsection or the procedure specified in Code Section 9-15-14, but not both."

SECTION 6.

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by inserting after 24-3-37 a new Code Section 24-3-37.1 to read as follows:

"24-3-37.1.

(a) The General Assembly finds that conduct, statements, or activity constituting voluntary offers of assistance or expressions of benevolence, regret, mistake, error, sympathy, or apology between or among parties or potential parties to a civil action should be encouraged and should not be considered an admission of liability. The General Assembly further finds that such conduct, statements, or activity should be particularly encouraged between health care providers and patients experiencing an unanticipated outcome resulting from their medical care. Regulatory and accreditation agencies are in some instances requiring health care providers to discuss the outcomes of their medical care and treatment with their patients, including unanticipated outcomes, and studies have shown such discussions foster improved communications and respect between provider and patient, promote quicker recovery by the patient, and

reduce the incidence of claims and lawsuits arising out of such unanticipated outcomes. The General Assembly therefore concludes certain steps should be taken to promote such conduct, statements, or activity by limiting their admissibility in civil actions.

(b) As used in this Code section, the term:

(1) 'Health care provider' means any person licensed under Chapter 9, 10A, 11, 11A, 26, 28, 30, 33, 34, 35, 39, or 44 of Title 43 or any hospital, nursing home, home health agency, institution, or medical facility licensed or defined under Chapter 7 of Title 31. The term shall also include any corporation, professional corporation, partnership, limited liability company, limited liability partnership, authority, or other entity comprised of such health care providers.

(2) 'Unanticipated outcome' means the outcome of a medical treatment or procedure, whether or not resulting from an intentional act, that differs from an expected or intended result of such medical treatment or procedure.

(c) In any claim or civil action brought by or on behalf of a patient allegedly experiencing an unanticipated outcome of medical care, any and all statements, affirmations, gestures, activities or conduct expressing benevolence, regret, apology, sympathy, commiseration, condolence, compassion, mistake, error, or a general sense of benevolence which are made by a health care provider or an employee or agent of a health care provider to the patient, a relative of the patient, or a representative of the patient and which relate to the unanticipated outcome shall be inadmissible as evidence and shall not constitute an admission of liability or an admission against interest."

SECTION 7.

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by striking Code Section 24-9-67, relating to expert opinion evidence, and inserting in its place a new Code section to read as follows:

"24-9-67.

(a) ~~The opinions of experts on any question of science, skill, trade, or like questions shall always be admissible; and such opinions may be given on the facts as proved by other witnesses. The opinion of a witness qualified as an expert under subsection (b) of this Code section may be given on the facts as proved by other witnesses. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing or trial. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.~~

(b) If scientific, technical, or other specialized knowledge will assist the trier of fact in any cause of action to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if:

(1) The testimony is based upon sufficient facts or data which are or will be admitted into evidence at the hearing or trial;

(2) The testimony is the product of reliable principles and methods; and

(3) The witness has applied the principles and methods reliably to the facts of the case.

(c) Notwithstanding the provisions of subsection (b) of this Code section and any other provision of law which might be construed to the contrary, in professional malpractice actions, the opinions of an expert, who is otherwise qualified as to the acceptable standard of conduct of the professional whose conduct is at issue, shall be admissible only if, at the time the act or omission is alleged to have occurred, such expert:

(1) Was licensed by an appropriate regulatory agency to practice his or her profession in the state in which such expert was practicing or teaching in the profession at such time; and

(2) In the case of a medical malpractice action, had actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:

(A) The active practice of such area of specialty of his or her profession for at least three of the last five years, with sufficient frequency to establish an appropriate level of knowledge, as determined by the judge, in performing the procedure, diagnosing the condition or rendering the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; or

(B) The teaching of his or her profession for at least three of the last five years as an employed member of the faculty of an educational institution accredited in the teaching of such profession, with sufficient frequency to establish an appropriate level of knowledge as determined by the judge in teaching others how to perform the procedure, diagnose the condition, or render the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; and

(C) Except as provided in subparagraph (D) of this paragraph:

(i) Is a member of the same profession;

(ii) Is a medical doctor testifying as to the standard of care of a defendant who is a doctor of osteopathy; or

(iii) Is a doctor of osteopathy testifying as to the standard of care of a defendant who is a medical doctor; and

(D) Notwithstanding any other provision of this Code section, an expert who is a physician and, as a result of having, during at least three of the last five years immediately preceding the time the act or omission is alleged to have occurred, supervised, taught, or instructed nurses, nurse practitioners, certified registered nursing anesthetists, nurse midwives, physician assistants, physical therapists, occupational therapists, or medical support staff, has knowledge of that standard of care of that health care provider under the circumstances at issue shall be competent to testify as to the standard of that health care provider. However, a nurse, nurse practitioner, certified registered nurse anesthetist, nurse midwife, physician

assistant, physical therapist, occupational therapist, or medical support staff shall not be competent to testify as to the standard of care of a physician.

(d)(1) If a witness is testifying as an expert in a civil action, then upon motion of a party, the court must hold a pretrial hearing to determine whether the witness qualifies as an expert and whether the expert's testimony satisfies the requirements of subsections (a) and (b) of this Code section. The court shall allow sufficient time for a hearing and shall rule on the qualifications of the witness to testify as an expert and whether or not the testimony satisfies the requirements of subsections (a) and (b) of this Code section. Such hearing and ruling shall be completed no later than the final pretrial conference contemplated under Code Section 9-11-16.

(2) If a witness is testifying as an expert in a criminal action, then upon motion of a party, the court may hold a hearing to determine the issues specified in paragraph (1) of this subsection at the time the witness is called to testify, outside the presence of the jury, if any.

(e) An affiant must meet the requirements of this Code section in order to be deemed qualified to testify as an expert by means of the affidavit required under Code Section 9-11-9.1

(f) It is the intent of the legislature that the courts of the State of Georgia not be viewed as open to expert evidence that would not be admissible in other states. Therefore, in interpreting and applying this Code section, the courts of this state may draw from the opinions of the United States Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993); General Electric Co. v. Joiner, 522 U.S. 136 (1997); Kumho Tire Co. Ltd. v. Carmichael, 526 U.S. 137 (1999); and other cases in federal courts applying the standards announced by the United States Supreme Court in these cases."

SECTION 8.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by striking subsection (b) of Code Section 33-3-27, relating to reports of medical malpractice judgments and settlements, and inserting in its place a new subsection (b) to read as follows:

"(b) Every insurer providing medical malpractice insurance coverage in this state shall notify in writing the Composite State Board of Medical Examiners when it pays a judgment in excess of \$10,000.00 or enters into an agreement to pay an amount in excess of \$10,000.00 to settle a medical malpractice claim against a person authorized by law to practice medicine in this state; such. Such judgments or agreements shall be reported to the board regardless of the dollar amount if the records of the insurer establish that there have been two or more previous judgments against or settlements with a licensed physician which relate to the practice of medicine. Such notice shall be sent within 30 days after the judgment has been paid or the agreement has been entered into by the parties involved in the claim."

SECTION 9.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by striking subsection (i) of Code Section 43-34-37, relating to disciplinary actions involving physicians, and inserting in its place new subsections (i) and (j) to read as follows:

"(i) The board shall investigate a licensee's or permit holder's fitness to practice medicine if the board has received ~~regarding that licensee~~ a notification, pursuant to Code Section 33-3-27, regarding that licensee or permit holder of a medical malpractice judgment or settlement in excess of \$100,000.00 or a notification pursuant to Code Section 33-3-27 that there have been two or more previous judgments against or settlements with the licensee or permit holder relating to the practice of medicine involving an action for medical malpractice. Every licensee or permit holder shall notify the board of any settlement or judgment involving the licensee or permit holder ~~and relating to the practice of medicine in excess of \$20,000.00~~ involving an action for medical malpractice.

(j) The board shall conduct an assessment of a licensee's fitness to practice medicine if it has disciplined the licensee three times in the last ten years as a result of an action for medical malpractice. The assessment shall include an examination of the licensee's entire history with respect to the practice of medicine and a one day on-site visit to the licensee's current practice location. The assessment shall be completed within six months of the third disciplinary action. As a result of its findings the board may take any action it deems necessary to reduce medical errors and promote patient safety, including revocation, suspension, or limiting the licensee's license or requiring additional clinical training, additional continuing medical education, proctoring, or referral to appropriate rehabilitation facilities. As used in this subsection, the term 'action for medical malpractice' shall have the same meaning as provided in Code Section 9-3-70. The board shall implement this subsection upon the effective date of a specific appropriation of funds for purposes of this subsection as expressed in a line item making specific reference to the full funding of this subsection in an appropriations Act enacted by the General Assembly."

SECTION 10.

Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding a new Code section immediately following Code Section 51-1-29.4, to be designated Code Section 51-1-29.5 to read as follows:

"51-1-29.5.

(a) As used in this Code section, the term:

(1) 'Dedicated emergency department' means any department or facility of the hospital located on the main hospital campus that meets one of the following requirements:

(A) It is held out to the public, by name, posted signs, advertising, or other means, as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or

(B) During the calendar year immediately preceding the calendar year in which a determination under this Code section is being made, based upon a representative sample of patient visits that occurred during that calendar year, it provided at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

(2) 'Emergency medical condition' means:

(A) A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

- (i) Placing the health of the individual, or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;
- (ii) Serious impairment to bodily functions; or
- (iii) Serious dysfunction of any bodily organ or part; or

(B) With respect to a pregnant woman who is having contractions:

- (i) That there is inadequate time to effect a safe transfer to another hospital before delivery; or
- (ii) That transfer may pose a threat to the health or safety of the woman or the unborn child.

(3) 'Health care provider' means any person licensed under Chapter 9, 10A, 11, 11A, 26, 28, 30, 33, 34, 35, 39, or 44 of Title 43 who provides care or assistance to an individual within the scope of such health care provider's licensure, either voluntarily or at the request of a hospital, including but not limited to any health care provider who is 'on call' to a hospital.

(4) 'Hospital' means a facility which has a valid permit or provisional permit issued by the Department of Human Resources under Chapter 7 of Title 31 and which operates a dedicated emergency department that provides care or assistance, including but not limited to emergency care, to individuals seeking medical treatment. Such term shall also include any employee of such hospital who provides care or assistance to such individuals within the scope of his or her employment, whether or not such person is a health care provider.

(b) The General Assembly makes the following findings: Georgia hospitals operating dedicated emergency departments are required by both state and federal law to provide examination and treatment to individuals who come to a dedicated emergency department, without regard to the financial or insurance status of such individuals. Hospitals and other health care providers have complied with these laws to their financial detriment and under the well-founded apprehension of increased liability. Due in large part to fear of such liability, hospitals are experiencing extreme difficulty attracting a sufficient number of physicians and other health care professionals to maintain an effective team of professionals, including on-call physicians, to provide needed care and assistance to citizens of this state. As a result, many hospitals are being forced to close their emergency departments or forgo other needed improvements in order to financially support such emergency services and their attendant liability. The shortage of these emergency providers poses a serious threat to the health, welfare, and

safety of the citizens of Georgia. Nevertheless, it is also recognized that patients who have been injured by negligence must be afforded appropriate access to legal remedies for their injuries. The General Assembly therefore concludes that certain steps must be taken to preserve Georgia citizens' access to emergency care on the one hand, while on the other hand providing appropriate remedies for patients who are negligently injured.

(c) Without waiving or affecting and cumulative of any existing immunity from any source, unless it is established that injuries or death were caused by willful or wanton misconduct, in deciding whether a hospital or health care provider that renders care or assistance in or at the request of a hospital or a health care provider to an individual who comes to a dedicated emergency department for treatment of a medical condition, whether such care or assistance is rendered gratuitously or for a fee, shall be held liable for damages to or for the benefit of any claimant arising out of any act or omission in rendering such care or assistance, the finder of fact must determine whether the hospital or health care provider met the applicable standard of care for treatment of such patients or conditions or both in an emergency department setting under similar conditions and like surrounding circumstances. In making such a determination, a jury shall be charged with the duty to consider all relevant circumstances that the hospital or health care provider faced when treating the patient or condition or both, including, but not limited to:

- (1) Whether any emergency circumstances were involved with the patient's condition;
 - (2) Whether the hospital or health care provider had access to the patient's relevant medical history;
 - (3) All relevant circumstances surrounding the operation of the facility;
 - (4) The number of patients seeking care;
 - (5) Whether there was a relevant preexisting relationship between the patient and defendant hospital or health care provider; and
 - (6) All other circumstances affecting the hospital or health care provider's ability to provide care under those circumstances at that time and place.
- (d) Notwithstanding any other law to the contrary, a cause of action alleging a breach of the applicable standard of care by a hospital or health care provider in the care and treatment of an emergency medical condition must be proven by clear and convincing evidence."

SECTION 11.

Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding immediately following Code Section 51-2-5, a new Code Section 51-2-5.1 to read as follows:

"51-2-5.1.

(a) As used in this Code section, the term:

- (1) 'Health care professional' means a professional licensed as a chiropractor, clinical social worker, dentist, dietitian, medical doctor, marriage and family therapist, registered or licensed practical nurse, occupational therapist, optometrist, osteopathic

physician, pharmacist, physical therapist, physician's assistant, professional counselor, podiatrist, psychologist, radiological technician, or respiratory therapist.

(2) 'Hospital' means a facility that has a valid permit or provisional permit issued by the Department of Human Resources under Chapter 7 of Title 31.

(b) Notwithstanding the provisions of Code Section 51-2-5, no hospital which complies with the notice provisions of either subsection (c) or subsection (d) of this Code section shall be liable in a tort action for the acts or omissions of a health care professional unless there exists an actual agency or employment relationship between the hospital and the health care professional.

(c) The hospital shall post a notice in the form and manner described herein. Such notice shall:

(1) Be posted conspicuously in the hospital lobby or a public area of the hospital;

(2) Contain print at least one inch high; and

(3) Provide language substantially similar to the following:

'Some or all of the health care professionals performing services in this hospital are independent contractors and are not hospital agents or employees. Independent contractors are responsible for their own actions and the hospital shall not be liable for the acts or omissions of any such independent contractors.'

(d) The hospital shall have the patient or the patient's personal representative sign a written acknowledgment that contains language substantially similar to that set forth in paragraph (3) of subsection (c) of this Code section.

(e) The notice required in this Code section shall be sufficient if it meets the requirements of either subsection (c) or subsection (d) of this Code section even if the patient or the patient's personal representative did not see or read such notice for any reason, including but not limited to medical condition or language proficiency.

(f) Whether a health care professional is an actual agent, an employee, or an independent contractor shall be determined by the language of the contract between the health care professional and the hospital. In the absence of such a contract, or if the contract is unclear or ambiguous, a health care professional shall only be considered the hospital's employee or actual agent if it can be shown by a preponderance of the evidence that the hospital reserves the right to control the time, manner, or method in which the health care professional performs the services for which licensed, as distinguished from the right to merely require certain definite results.

(g) If the court finds that there is no contract or that the contract is unclear or ambiguous as to the relationship between the hospital and health care professional, the court shall apply the following:

(1) Factors that may be considered as evidence the hospital exercises a right of control over the time, manner, or method of the health care professional's services include: the parties believed they were creating an actual agency or employment relationship; the health care professional receives substantially all the employee benefits received by actual employees of the hospital; the hospital directs the details of the health care professional's work step-by-step; the health care professional's services are terminable at the will of the hospital without cause and without notice;

the hospital withholds, or is required to withhold, federal and state taxes from the remuneration paid to the health care professional for services to the patients of the hospital; and factors not specifically excluded in paragraph (2) of this subsection; and (2) Factors that shall not be considered as evidence a hospital exercises a right of control over the time, manner, or method of the health care professional's services include: a requirement by the hospital that such health care professional treat all patients or that any health care professional or group is obligated to staff a hospital department continuously or from time to time; the hospital's payment to the health care professional on an hourly basis; the provision of facilities or equipment by the hospital; the fact a health care professional does not maintain a separate practice outside the hospital; the source of the payment for the professional liability insurance premium for that health care professional; the fact that the professional fees for services are billed by the hospital; or any requirement by the hospital that such health care professional engage in conduct required to satisfy any state or federal statute or regulation, any standard of care, any standard or guideline set by an association of hospitals or health care professionals, or any accreditation standard adopted by a national accreditation organization."

SECTION 12.

Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by striking Code Section 51-12-31, relating to recovery against joint trespassers, and Code Section 51-12-33, relating to apportionment of damages, and inserting in their respective places new Code sections to read as follows:

"51-12-31.

Except as provided in Code Section 51-12-33, where an action is brought jointly against several ~~trespassers~~ persons, the plaintiff may recover damages for ~~the greatest injury done an injury caused~~ by any of the defendants against ~~all of them~~ only the defendant or defendants liable for the injury. In its verdict, the jury may specify the particular damages to be recovered of each defendant. Judgment in such a case must be entered severally."

"51-12-33.

(a) ~~Where an action is brought against more than one person for injury to person or property and the plaintiff is himself to some degree responsible for the injury or damages claimed, the trier of fact, in its determination of the total amount of damages to be awarded, if any, may apportion its award of damages among the persons who are liable and whose degree of fault is greater than that of the injured party according to the degree of fault of each person. Damages, if apportioned by the trier of fact as provided in this Code section, shall be the liability of each person against whom they are awarded, shall not be a joint liability among the persons liable, and shall not be subject to any right of contribution. Where an action is brought against one or more persons for injury to person or property and the plaintiff is to some degree responsible for the injury~~

or damages claimed, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall determine the percentage of fault of the plaintiff and the judge shall reduce the amount of damages otherwise awarded to the plaintiff in proportion to his or her percentage of fault.

(b) ~~Subsection (a) of this Code section shall not affect venue provisions regarding joint actions.~~ Where an action is brought against more than one person for injury to person or property, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall after a reduction of damages pursuant to subsection (a) of this Code section, if any, apportion its award of damages among the persons who are liable according to the percentage of fault of each person. Damages apportioned by the trier of fact as provided in this Code section shall be the liability of each person against whom they are awarded, shall not be a joint liability among the persons liable, and shall not be subject to any right of contribution.

(c) ~~This Code section shall apply only to causes of action arising on or after July 1, 1987.~~

(c) In assessing percentages of fault, the trier of fact shall consider the fault of all persons or entities who contributed to the alleged injury or damages, regardless of whether the person or entity was, or could have been, named as a party to the suit.

(d)(1) Negligence or fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice not later than 120 days prior to the date of trial that a nonparty was wholly or partially at fault.

(2) The notice shall be given by filing a pleading in the action designating the nonparty and setting forth the nonparty's name and last known address, or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing the nonparty to be at fault.

(e) Nothing in this Code section shall eliminate or diminish any defenses or immunities which currently exist, except as expressly stated in this Code section.

(f)(1) Assessments of percentages of fault of nonparties shall be used only in the determination of the percentage of fault of named parties.

(2) Where fault is assessed against nonparties pursuant to this Code section, findings of fault shall not subject any nonparty to liability in any action or be introduced as evidence of liability in any action.

(g) Notwithstanding the provisions of this Code section and any other provisions of law which might be construed to the contrary, the plaintiff shall not be entitled to receive any damages if the plaintiff is 50 percent or more responsible for the injury or damages claimed."

SECTION 13.

Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding a new Chapter 13 to read as follows:

"CHAPTER 13

51-13-1.

(a) As used in this Code section, the term:

(1) 'Claimant' means a person, including a decedent's estate, who seeks or has sought recovery of damages in a medical malpractice action. All persons claiming to have sustained damages as the result of the bodily injury or death of a single person are considered a single claimant.

(2) 'Health care provider' means any person licensed under Chapter 9, 10A, 11, 11A, 26, 28, 30, 33, 34, 35, 39, or 44 of Title 43. The term shall also include any corporation, professional corporation, partnership, limited liability company, limited liability partnership, authority, or other entity comprised of such health care providers.

(3) 'Medical facility' means any institution or medical facility licensed under Chapter 7 of Title 31 or any combination thereof under common ownership, operation, or control.

(4) 'Noneconomic damages' means damages for physical and emotional pain, discomfort, anxiety, hardship, distress, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, injury to reputation, and all other nonpecuniary losses of any kind or nature. This term does not include past or future:

(A) Medical expenses, including rehabilitation and therapy;

(B) Wages or earnings capacity;

(C) Income;

(D) Funeral and burial expenses;

(E) The value of services performed by the injured in the absence of the injury or death including those domestic and other necessary services performed without compensation; or

(F) Other monetary expenses.

(b) In any verdict returned or judgment entered in a medical malpractice action, including an action for wrongful death, against one or more health care providers, the total amount recoverable by a claimant for noneconomic damages in such action shall be limited to an amount not to exceed \$250,000.00, regardless of the number of defendant health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.

(c) In any verdict returned or judgment entered in a medical malpractice action, including an action for wrongful death, against a single medical facility, inclusive of all persons and entities for which vicarious liability theories may apply, the total amount recoverable by a claimant for noneconomic damages in such action shall be limited to an amount not to exceed \$250,000.00, regardless of the number of separate causes of action on which the claim is based.

(d) In any verdict returned or judgment entered in a medical malpractice action, including an action for wrongful death, against more than one medical facility, inclusive of all persons and entities for which vicarious liability theories may apply, the

total amount recoverable by a claimant for noneconomic damages in such action shall be limited to an amount not to exceed \$250,000.00 from any single medical facility and \$500,000.00 from all medical facilities, regardless of the number of defendant medical facilities against whom the claim is asserted or the number of separate causes of action on which the claim is based.

(e) In applying subsections (b), (c), and (d) of this Code section, the aggregate amount of noneconomic damages recoverable under such subsections shall in no event exceed \$750,000.00.

(f) In any medical malpractice action, if an award of future damages equaling or exceeding \$250,000.00 is made against any party in the action, the trial court shall, upon the request of any party, issue an order providing that such damages be paid by periodic payments. Such periodic payments shall be funded through an annuity policy with the premium for such annuity equal to the amount of the award for future damages."

SECTION 14.

In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

SECTION 15.

(a) This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(b) Code Sections 51-12-31 and 51-12-33, as amended by this Act, and Code Sections 51-1-29.5, 51-2-5.1, and 51-13-1, as enacted by this Act, shall apply only with respect to causes of action arising on or after the effective date of this Act, and any prior causes of action shall continue to be governed by prior law. It is the intention of the General Assembly that all other provisions of this Act shall apply to causes of action pending on its effective date, unless such application would be unconstitutional.

SECTION 16.

All laws and parts of laws in conflict with this Act are repealed.

On the adoption of the substitute, the yeas were 41, nays 4, and the committee substitute was adopted.

Senator Meyer von Bremen of the 12th asked unanimous consent that he be excused from voting on SB 3 pursuant to Senate Rule 5-1.8(d). The consent was granted, and Senator

Meyer von Bremen was excused.

The report of the committee, which was favorable to the passage of the bill by substitute, was agreed to.

On the passage of the bill, a roll call was taken, and the vote was as follows:

N Adelman	Y Hill,Jack	Y Smith
Y Balfour	Y Hill,Judson	Y Starr
N Brown	Y Hooks	Y Staton
Y Bulloch	Y Hudgens	Y Stephens
N Butler	Y Johnson	N Stoner
Y Cagle	Y Jones	N Tate
Y Carter	Y Kemp	Y Thomas,D
Y Chance	E Me V Bremen	N Thomas,R
Y Chapman	N Miles	N Thompson,C
Y Douglas	Y Moody	N Thompson,S
N Fort	E Mullis	Y Tolleson
Y Goggans	Y Pearson	Y Unterman
Y Golden	Y Powell	Y Walker
Y Grant	N Reed	Y Weber
Y Hamrick	Y Rogers	Y Whitehead
N Harbison	Y Schaefer,N	Y Wiles
Y Harp	Y Seabaugh	Y Williams
Y Heath	N Seay	N Zamarripa
N Henson	Y Shafer,D	

On the passage of the bill, the yeas were 39, nays 15.

SB 3, having received the requisite constitutional majority, was passed by substitute.

Senator Stephens of the 27th moved that the Senate adjourn until 10:00 a.m. Wednesday, February 2, 2005.

The motion prevailed, and the President announced the Senate adjourned at 1:34 p.m.